Supreme Court of the United States. 1

EMILIE SAXLEHNER, Petitioner, vs. EISNER & MENDELSON COMPANY.	October Term, 1900. No. 29.

Notice of Motion.

TO EISNER & MENDELSON COMPANY, THE ABOVE NAMED DEFENDANT: 2

Please take notice that on Monday, January 7, 1901, at the opening of the Court on that day, or as soon thereafter as counsel can be heard, a motion to recall the mandate herein and to make the decree of the Supreme Court of the United States entered herein on October 15, 1900, more definite and certain, of which motion a copy is annexed, will be submitted to said Supreme Court of the United States at the City of Washington, D. C., for the decision of the Court thereon.

In support of said motion a certificate of the Hon. Nathaniel Shipman, U. S. Circuit Judge, a petition and a brief will also be presented to the Court. A copy of the certificate and petition is herewith served upon you. 3

New York, December 21, 1900.

Respectfully,

ANTONIO KNAUTH,
ARTHUR v. BRIESEN, and
JOHN G. JOHNSON,
Advocates and of Counsel for Petitioner.

4 SUPREME COURT OF THE UNITED STATES.

EMILIE SAXLEHNER, Petitioner, vs. EISNER & MENDELSON COMPANY.	October Term, 1900. No. 29.

Motion.

And now comes Emilie Saxlehner, the above named petitioner, by Antonio Knauth, Arthur v. Briesen and John G. Johnson, her advocates and
5 counsel, and moves this Honorable Court to recall its mandate issued herein on the 20th day of November, 1900, to the Circuit Court of the United States for the Southern District of New York, for the purpose of amending the same, and to make its decree entered herein on the 15th day of October, 1900, more definite and certain concerning the relief to be granted to the complainant.

The matter involved herein relates to the protection of the petitioner in the exclusive use of her peculiar shape of bottle, label and capsule, used for her "Hunyadi Janos" bitter water, and each one thereof, and the question to be determined arises from the doubt of the Circuit Court as to whether
6 the direction contained in the last paragraph of said decree was meant to deny to the complainant the relief by injunction separately claimed in her bill of complaint upon her bottle, capsule and label, and each one thereof, and confine it to relief upon the label.

Dated December 21, 1900.

EMILIE SAXLEHNER,
Petitioner,
By ANTONIO KNAUTH,
ARTHUR V. BRIESEN and
JOHN G. JOHNSON,
Her Advocates and Counsel.

SUPREME COURT OF THE UNITED STATES. 7

EMILIE SAXLEHNER, Petitioner, vs. EISNER & MENDELSON COMPANY.	October Term, 1900. No. 29.

TO THE HONORABLE THE SUPREME COURT OF THE UNITED STATES:

The petition of Emilie Saxlehner, respectfully shows to this Court: 8

FIRST.—That on the 20th day of November, 1900, a mandate issued out of this Honorable Court to the Circuit Court of the United States for the Southern District of New York, which recited a decree of this Court entered herein on October 15, 1900, and was in words as follows:

UNITED STATES OF AMERICA, ss.:

THE PRESIDENT OF THE UNITED STATES OF AMERICA, TO THE HONORABLE THE JUDGES OF THE [SEAL.] CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK, GREETING:

WHEREAS, lately in the United States Circuit 9 Court of Appeals for the Second Circuit, in a cause between Emilie Saxlehner, appellant, and The Eisner & Mendelson Company, appellee, and The Eisner & Mendelson Company, appellant, and Emilie Saxlehner, appellee, on appeal and cross appeal, wherein the decree of the said Circuit Court of Appeals, entered in said cause on the 24th day of January, A. D. 1899, is in the following words, viz.:

"This cause came on to be heard on the transcript of record from the Circuit Court of the United

10 States for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed, that the decree of said Circuit Court be, and it hereby is, affirmed as to the name Hunyadi, but modified so as to dismiss the bill as to the red and blue label, with costs of this appeal to defendants.

It is further ordered, that a mandate issue to the said Circuit Court in accordance with this decree.

W. J. W.
E H. L."

as by the inspection of the transcript of the record of the said United States Circuit Court of Appeals,
11 which was brought into the Supreme Court of the United States by virtue of a writ of *certiorari* agreeably to the Act of Congress, in such case made and provided, fully and at large appears.

AND WHEREAS, in the present Term of October, in the year of our Lord one thousand nine hundred, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now here ordered, adjudged and decreed, by this Court that the decree of the said United States Circuit Court of
12 Appeals in this cause be and the same is hereby reversed, with costs; and that the said Emilie Saxlehner recover against the said The Eisner & Mendelson Company three hundred and forty-four dollars and three cents for her costs herein expended and have execution therefor.

And it is further ordered, that this cause be and the same is hereby remanded to the Circuit Court of the United States for the Southern District of New York with directions to reinstate its decree of April 29, 1898, except so far as it denies to the plaintiff an injunction against the use of the Seal brand labels and damages sustained by such use; and for

further proceedings not inconsistent with the opinion 13
of this Court.

OCTOBER, 15, 1900.

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause, in conformity with the opinion and decree of this Court, as according to right and justice, and the laws of the United States, ought to be had, the said writ of *certiorari* notwithstanding.

WITNESS the Honorable MELVILLE W. FULLER, Chief Justice of the United States, the 20th day of November, in the year of our Lord one thousand nine hundred.

JAMES H. MCKENNEY,
Clerk of the Supreme Court 14
of the United States.

COSTS OF SAXLEHNER:

Clerk	$145.40
Printing Record	178.63
Attorney	20.00
	$344.03

SECOND.—That said mandate was filed in the said Circuit Court on November 26, 1900.

THIRD.—That thereafter, on December 10, 1900, your petitioner, the complainant, presented to Hon. Nathaniel Shipman, a Judge of said Circuit Court, a proposed decree for injunction and accounting in 15
which she prayed for injunctive relief upon her style of bottle, the same being of straight shape with a short neck, in connection with the sale of defendant's bitter water, and also for an injunction against the use of any imitation of her label. Said defendant presented a proposed decree confining complainant's relief by injunction to the use of imitating labels and not providing for any injunction upon the shape of the bottle, nor the capsule, except when used with the label.

FOURTH.—Contention thereupon arose as to whether it was the intention of this Honorable

16 Court, by its opinion herein filed October 15, 1900, to grant to the complainant the relief for injunction prayed in her bill of complaint upon her peculiar shape of bottle, the design of her capsule and label, and each one thereof, in accordance with the facts found and stated in the opinion of this Court, or whether the directions contained in the last paragraph of said opinion were meant to confine said injunction to the label only, in accordance with the terms of the decree of the Circuit Court of April 29, 1898, excepting therefrom only the provisions as to the seal brand label. The matter having been argued by counsel for complainant and defendant, the Judge to whom it was presented remained in
17 doubt, and he declined to sign any decree until such doubt should be removed by appropriate proceedings in this Court, and signed and delivered to complainant's counsel the statement dated December 17, 1900, hereto annexed.

FIFTH.—And your petitioner further represents that by such action of the Circuit Court, as aforesaid, she is unable to suppress the use of the labels, capsules and peculiar shape of bottles adopted by defendant in intended simulation of her style of bottles and labels for her Hunyadi Janos Water and is without remedy, and prays for an order that said mandate be recalled and that the decree of this Court entered in this cause on October 15, 1900, be
18 made more definite and certain so as to remove the doubt aforesaid and grant to petitioner a decree of injunction for imitation of her label, capsule and shape of bottle, and each one thereof, as prayed in her bill of complaint; and that your petitioner have such further or other relief as may be deemed proper and in the interest of justice.

And your petitioner will ever pray, &c.

EMILIE SAXLEHNER,
Petitioner,

By ANTONIO KNAUTH,
ARTHUR V. BRIESEN, and
JOHN G. JOHNSON,
Her Advocates and Counsel.

UNITED STATES CIRCUIT COURT, 19

SOUTHERN DISTRICT OF NEW YORK.

EMILIE SAXLEHNER,
Complainant,

vs.

EISNER & MENDELSON COMPANY,
Defendant.

20

SAME

vs.

SIEGEL-COOPER COMPANY.

SAME

vs.

RUDOLPH GIES. 21

SAME

vs.

LOUIS MARQUET.

Proposed decrees for injunction and accounting having been presented to me by counsel for the

complainant and the defendants in supposed accordance with the decrees of the Supreme Court of the United States herein dated October 15, 1900, and the several mandates issued thereon to this Court, I certify that I entertain doubt on the question whether said Supreme Court intended to grant to the complainant the relief upon the shape of the bottle prayed in her several bills of complaint herein apart from the label, or intended to confine the relief to the label, whether used with or without the bottle, and that for this reason I have declined to sign any decree herein until such doubt will be removed by appropriate proceedings in the United States Supreme Court.

Dated December 17, 1900.

N. SHIPMAN,
Circuit Judge.

Due service of the foregoing notice of motion, certificate, motion and petition is hereby admitted this day of December, 1900.

Defendant.

By

its Attorney and Counsel.